



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

I. Preston Bryant, Jr.
Secretary of Natural Resources

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David K. Paylor
Director

Gerard Seeley, Jr.
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO FIVE STAR PROPERTY HOLDINGS, LLC

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 62.1-44.15(8a) and (8d), between the State Water Control Board and Five Star Property Holdings, LLC for the purpose of resolving certain violations of environmental law and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "VA Code" means the Code of Virginia (1950), as amended.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
6. "Order" means this document, also known as a Consent Special Order.

7. "Facility" or "Express Mart", means the combination convenience store and gasoline station containing five underground storage tanks currently in use, FAC ID No. 400235, located at 9210 Jefferson Davis Highway, Richmond, Virginia.
8. "Five Star Property" means Five Star Property Holdings, LLC, owner of "Express Mart", certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
9. "Notification Form" means Form 7530 used by DEQ to register and track USTs for proper operation, closure, and ownership purposes. 9 VAC 25-580-70.
10. "Regulation" means 9 VAC 25-580-10 *et seq.* (Underground Storage Tanks: Technical Standards and Corrective Action Requirements) relating to upgrading of existing USTs systems, registration of tanks, closure of noncompliant tanks, and release detection requirements.
11. "UST" means underground storage tank as defined in 9 VAC 25-580-10 and Virginia Code § 62.1-44.34:8.

SECTION C: Findings of Fact and Conclusions of Law

1. Five Star Property Holdings, LLC (Five Star Property) is the owner of Express Mart (the Facility). The Facility, which is a convenience store and retail gasoline station, is located at 9210 Jefferson Davis Highway, Richmond, Virginia.
2. At the Facility there are five USTs used to store petroleum for retail sale. The USTs are identified as follows:

Tank No.	Capacity	Content
1	12,000	gasoline
2	10,000	diesel
3	8,000	gasoline
4	8,000	gasoline
5	4,000	kerosene

3. Because petroleum is a "regulated substance" as defined by Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10, the USTs at the Facility are regulated under 9 VAC 25-580-10, *et seq.*
4. On July 25, 2005, the Department conducted a formal inspection of the Facility and observed deficiencies at the site. The registered owners were notified by a Request for Corrective Action (RCA) to address the deficiencies. The registered owners responded by submitting an amended 7530 Notification Form and Bill of Sale stating that the property had sold to Five Star Property 17 days prior to the inspection. Five Star Property was then sent an RCA that requested the submittal of an amended 7530 Notification Form by the new owners. Due to a lack of

response, the Department issued a Warning Letter (WL) in April 2006. In response to the WL, Five Star Property submitted an amended 7530 Notification Form in June 2006.

5. On October 27, 2006, the Department entered into a Letter of Agreement (LOA) with Five Star Property to address the deficiencies that were still outstanding from the July 2005 inspection. Five Star Property did not comply with the LOA.
6. On September 27, 2007, the Department issued Five Star Property a Notice of Violation (NOV) for the following outstanding deficiencies from the July 2005 inspection:
 - records of recent compliance with release detection requirements were not available, in apparent violation of 9 VAC 25-580-120, and recent monthly release detection was not performed, in apparent violation of 9 VAC 25-580-140;
 - failure to demonstrate compliance with the spill and overfill prevention equipment as specified in 9 VAC 25-580-50; and
 - financial responsibility documentation was not available, in apparent violation of 9 VAC 25-590-10 *et seq.*
7. In response to the NOV, Five Star Property met with the Department to discuss resolution of the alleged violations. At the meeting, Five Star Property agreed to determine the type of spill and overfill prevention equipment at the site; contract with a company to provide the monthly release detection monitoring reports; and pursue a letter of credit to comply with the financial responsibility documentation.
8. On November 6, 2007, Five Star Property contacted the Department and stated that it was forwarding information to a company to perform the monthly release detection monitoring reports; had submitted verification of the overfill prevention equipment at the site; and was still pursuing financial responsibility.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders Five Star Property, and Five Star Property voluntarily agrees, to perform the actions described in Appendix A of this Order; and voluntarily agrees to pay a civil charge of **\$7,080** in accordance with the schedule in Appendix A of the Order in settlement of the violations cited in this Order. The payment shall note that it is being made pursuant to this Order and shall note the Federal Identification Number for Five Star Property. Payment shall be by check, certified check, money order, or cashiers check payable to "Treasurer of Virginia" and sent to:

**Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218**

Payment shall include the Federal Tax Identification Number for the Facility.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Five Star Property, for good cause shown by Five Star Property, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the NOV issued on September 27, 2007. This Order shall not preclude the Board or the Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the property as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
3. For purposes of this Order and subsequent actions with respect to this Order, Five Star Property admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Five Star Property consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Five Star Property declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Five Star Property to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. Five Star Property shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Five Star Property shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Five Star Property shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Five Star Property. Notwithstanding the foregoing, Five Star Property agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. Five Star Property petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - b. The Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Five Star Property.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Five Star Property from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By the signatures below, Five Star Property voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of July 31, 2008.

Gerard Seeley, Jr.
Gerard Seeley, Jr., Regional Director
Department of Environmental Quality

Five Star Property voluntarily agrees to the issuance of this Order.

By: Saron V. Arias
Date: 4/24/08

Commonwealth of Virginia

City/County of Henrico

The foregoing document was signed and acknowledged before me this 24 day of April, 2008, by Saron V. Arias on behalf of Five Star Property.
(name)

James E. Allen 7034385
Notary Public

My Commission Expires
January 31 2010

My commission expires: _____

APPENDIX A

Five Star Property shall:

1. Submit to the Department copies of the monthly tank release detection testing and monitoring records in accordance with 9 VAC 25-580-140 for the next 6 consecutive months, beginning with **March 2008** and ending with the **August 2008** records.
Submit the monthly release detection testing and monitoring records by April 5, 2008, May 5, 2008, June 5, 2008, July 5, 2008, August 5, 2008 and September 5, 2008 .
2. Make five (5) quarterly payments in settlement of the violations cited in the Order as scheduled:
 - A payment of **\$1,500** shall be due by.....**September 15, 2008**
 - A payment of **\$1,500** shall be due by.....**December 15, 2008**
 - A payment of **\$1,500** shall be due by.....**March 15, 2009**
 - A payment of **\$1,500** shall be due by.....**June 15, 2009**
 - A payment of **\$1,080** shall be due by.....**September 15, 2009**
3. **Pursuant to this Order, submit all documentation, except for the quarterly payments of the civil charge, as required by Appendix A to:**

**Cynthia Akers
Department of Environmental Quality
Piedmont Regional Office
4949-A Cox Road
Glen Allen, Virginia 23060**